Supreme Court of the United States

No.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960.

No.

THOMAS D. GOSS, also known as THOMAS DUGGAN,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

To The Honorable Earl Warren, Chief Justice, And The Associate Justices Of The Supreme Court Of The United States:

Thomas D. Goss, also known as Thomas Duggan, respectfully petitions for a Writ of Certiorari to the Supreme Court of Illinois, to review its decision and judgment rendered in this case.

REFERENCE TO OFFICIAL REPORTS.

The opinion of the Supreme Court of Illinois in *The People of the State of Illinois, Defendant in Error* v. *Thomas D. Goss, Plaintiff in Error,* is reported in 20 Ill. 2d 224, 170 N.E. 2d 113. The Supreme Court of Illinois in that case said that all the critical constitutional questions in that case were decided in the previous appeal which ap-

pears in the case of the *People of the State of Illinois, Defendant in Error* v. *Thomas D. Goss, Plaintiff in Error* which is reported in 10 Ill. 2d 533, 141 N.E. 2d 385.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

DATE OF JUDGMENT SOUGHT TO BE REVIEWED AND TIME OF ITS ENTRY.

The Supreme Court of Illinois is the Court of last resort in Illinois. The opinion and judgment sought to be reviewed was dated September 29, 1960, and was also entered on September 29, 1960.

DATE OF ORDER RESPECTING PETITION FOR REHEARING.

A petition for rehearing was timely filed on October 14, 1960, under Rule 55 of the Supreme Court of Illinois which allows 15 days after the filing of the opinion to file such Petition. An order was entered on November 30, 1960, by the Supreme Court of Illinois denying a rehearing.

STATUTORY PROVISION BELIEVED TO CONFER JURISDICTION ON THIS COURT.

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. 1257 (3).

THE QUESTION PRESENTED FOR REVIEW.

The question presented is whether petitioner's conviction of an indirect criminal contempt for statements made on his television show in connection with a pending civil trial is in violation of his right of freedom of speech or press guaranteed by the First Amendment to the United States Constitution as made applicable to the States by the Fourteenth Amendment.

1. Where the State of Illinois failed to charge or offer proof that petitioner's remarks were a clear and present danger to the administration of justice.

2. Where it plainly appears that petitioner's remarks did not present a clear and present danger to the administration of justice.

3. Where the Supreme Court of Illinois under the guise of the "clear and present danger" test as set out in *Bridges* v. *California*, 314 U.S. 252, and *Craig, et al.* v. *Harney*, 331 U.S. 367, applied the "tendency" rule of *Toledo Newspaper Company* v. *United States*, 247 U.S. 402.

4. Where petitioner's offers to prove the truth of his comments were rejected although the petitioner was charged and found guilty of making false comments.

5. Where the Supreme Court of Illinois overlooked the fact that the critical utterances made by petitioner must be considered in the light of the community environment which prevailed at that time before it can be determined if such utterances present a clear and present danger to the administration of justice.

6. Where the petitioner had been accused of a serious social offense in a child custody trial to which he was not a party which might ruin his livelihood and where silence on his part might mean a confession of guilt.

7. Where on petitioner's second trial he was denied a change of venue or a jury trial after the Supreme Court of Illinois had after the first trial held that petitioner was guilty of contempt but remanded the case with directions to grant a change of venue.

THE CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE.

1. The First Amendment to the Constitution of the United States is as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

2. The pertinent portion of the Fourteenth Amendment to the Constitution of the United States is as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE.

During the year 1955, your petitioner appeared regularly on an evening television program broadcast five nights a week at 11:10 P.M. from a Chicago station. The petitioner indicated that this program was watched or he hoped it was watched by some 200,000 persons within the Chicago area. (R4, Abs. 211, 222) Your petitioner was charged with contempt of court, and the charge of contempt was based on certain remarks made by petitioner in the course of these broadcasts during July, August, and September, 1955, with reference to a custody hearing in a divorce action then being tried in the Superior Court of Cook County, Illinois. (R4, Abs. 32)

On July 26, 1955, Carl Champagne filed a complaint for divorce against his wife, Shirley, in the Superior Court of Cook County, charging her with cruelty. On the same date he made a motion that he be granted custody of their child, and a hearing on this motion was held before Judge Daniel A. Covelli. (R4, Abs. 84, 113). The hearing commenced on July 26 and lasted until July 29, at which time the court entered an order granting temporary custody to Carl Champagne's parents, and continuing the case until September 12 because the testimony on the part of the plaintiff had not been concluded. On the latter date the hearing was resumed and it continued until September 20, on which date another order was entered which also granted temporary custody to the paternal grandparents. The complaint for divorce was still pending and undisposed of at this date. (R4, Abs. 101-103)

On July 28, 1955, one Robert Risberg, a private detective, testified on behalf of Carl Champagne that on June 3, Mrs. Champagne went to petitioner's apartment at 2:30 A.M. and that he did not see her leave, but watched the apartment to 6:00 A.M., and that on June 11 she had spent the hours of from 2:00 A.M. to 5:45 A.M. there. The Supreme Court of Illinois erroneously stated the facts to be that Risberg testified on July 29, and that he said Mrs. Champagne did not leave to 6:00 P.M. On July 29, the Complaint was amended to charge Mrs. Champagne with having committed adultery with John Doe on the dates mentioned above. (R4, Abs. 4, 5, 87-90)

On July 27 there also testified on behalf of Carl Champagne, his father, Dr. Carl Champagne, and his uncle, Anthony Champagne. (R4, Abs. 86)

In his telecast on July 28, 1955, petitioner said of Risberg that:

> "He is a 24 year old professional sneak and liar". (R4, Abs. 35)

Petitioner said in his telecast on July 29, 1955:

"I was all set to make any number of comments on a certain child custody hearing that is going on over in the Superior Court in the county building which has brought my name into the Chicago American, if not into the other papers but I have some excellent legal advice that I better stop commenting on the testimony as it goes along or I am,—I am going to go into the pokey.

It seems to be there is some precedent in the Illinois Courts as established in the Supreme Court of Illinois that regardless of how truthful the informative comments might be that you might make on a trial that is in progress that has no bearing on the case, you can go into the pokey. There is a number of excellent cases proving the point, and so my lawyer has asked me to refrain from getting him in trouble as well as myself." (R4, Abs. 6)

Petitioner said in his telecast on August 1, 1955:

"Now the purpose of the Chicago American's tirade against me is to destroy my television effectiveness and destroy my audience's confidence in me. Well, that is too bad, really it's more or less the fortunes of war. I have spoken against them publicly on many occasions. Most recently I protested their persecution of a very particular police officer by the name of Dawes. The purpose of the tirade against the young mother is to take her child away from her. Now, a west side family named Champana with court admitted hoodlum connections warned this young lady that if she left her jobless husband that they would take her child away from her. Now, the jobless husband by the way is unemployed through his own efforts, being perfectly contented to have his wife, his baby and himself dependent upon the charity of his father, a doctor, and as I pointed out before, a known associate of hoodlums. He is also, this doctor has also been revealed.

by newspaper articles, to be the doctor who testified for a syndicate hoodlum in a case not long ago against a Chicago policeman charging police brutality. The court did not believe the doctor nor the hoodlums and the police were exonerated.

Last Saturday, Carl Champagne, the plaintiff in this case, which has involved Mrs. Shirley L. Champagne's name with mine, broke into Mrs. Champagne's apartment and beat her. He also threatened her again just as he has threatened her with loss of her child, this time he threatened her with a life of a prostitute. He said that the influence of our syndicate hoodlums could be used to discourage any decent people from associating with her, either men or women, and that they would see that she would be unable to find work, to support herself and force her, by threats of physical violence and other ways, into such a life.

Now, the Chicago American in this particular matter reported the altercation as practically a figment of this woman's imagination. I would also like to recall to your attention that an offer was made to leave my name out of this case if I would promise to lay off the hoodlums and it was made by Anthony Champagne the lawyer uncle who represents these hoodlums. I refused and I advised Mrs. Shirley Champagne through Thomas Rosenberg, her attorney and a personal friend of mine, that I would do everything in my power to prevent the legal kidnapping of her child. I am being sued by this Carl Champagne for two hundred and fifty thousand dollars damages in an alienation of affections action; now, this is sort of funny, but it doesn't worry me at all. A bunch of liars and hoodlums will not get two hundred and fifty thousand dollars from me, even if I had two hundred and fifty thousand dollars which I don't have.

To keep their smear going, the Chicago American has spent every filthy effort it can think of. One of their reporters attempted to bribe the carhops in the garage in which I live, to identify a picture of Mrs.

Champagne. One of their reporters approached my ex-wife and asked her to make a statement that my running around with other women led to my divorce. Fortunately Swedish-Americans are not dominated by any hoodlum syndicate and she refused to make such a comment. She also told them that any information about our marriage would have to come from me. The Chicago American described me as a wavy-haired Romeo. Now, I have been back in Chicago for six years and have worked steadily through that period on television under the nagging handicap of a chronic ulcer condition which led to a major operation in January of this year. Since last fall, I have been under constant medical attention and have been in the hospital three times. Anyone having any knowledge of the pain and discomfort caused by bleeding ulcers could hardly believe an ulcer capable of breaking up anybody's home but his own. My two and a half room apartment is described in the Chicago American as a love nest. I use it as an office as well as a home. Many people have been in my apartment late at night, both men and women. I work afternoons and evenings. I do not complete my on the air television work until midnight. Any social life I have comes after that. I do not propose to spend my life in taverns and night clubs, the only places open at that hour, just to satisfy the Chicago American or a bunch of west side hoodlums and gangsters that I am not committing adultery. The Chicago American and the friends of the hoodlums keep referring to trysts that I have had with Mrs. Champagne in the Pump Room of the Ambassador East Hotel and the Polynesian Room of the Edgewater Beach Hotel. After six years in television my face is pretty identifiable and gossip columnists frequent these places. They seem hardly the comfortable place to carry on a tryst or a serious, rather a tryst or series of trysts.

The attack on me concerns me very little. I said Friday and I repeat it now, I have neither respect

nor fear of the Chicago American. I do, however, feel very sorry for Mrs. Champagne. She is a fine young woman and she is a devoted mother. I also feel sorry for her baby, who will some day become aware of all this. It seems to me that the Chicago American has belatedly come out against adultery and also has come out against motherhood and I will have more to say on this at a future date." (R4, Abs. 7)

Petitioner said in his telecast on August 12, 1955:

"I have much to say on any number of subjects and any number of people concerned in this thing and I intend to say it over the long haul. I worked very hard today doing other things. I have two television shows as well as being out at Drury Lane, so I had no time to prepare anything and with the sneaky type of people that I am dealing with in this instance, why I want to make sure that my preparations are all they should be so that is why I am not saying anything on the Chicago American or the Champagnes or the Mooney-Gianconas or the hoodlums syndicate or anyone else; but I shall have a great deal to say in the future but it will be well thought out before I say it because, as I say, I think there is sneaky. . . . sneaky is to put it mildly, by the way, that is just one of the easiest descriptions I can give". (R4, Abs. 11)

Petitioner said in his telecast on August 30, 1955:

"Now, then, I read this to you before. I might as well read it again, off the front page of the Chicago American. Bulletin: Duggan sued anew. A suit for—a new suit for four hundred thousand dollars alleged slander against—was filed in Circuit Court today against Tom Duggan, television performer, the American Broadcasting Company and Station WBKB, and the Oklahoma Oil Company, by Robert Risberg. Anyway, I found out about this with great irritation this

evening that this twenty-four year old professional sneak and liar named Robert Risberg has filed a suit seeking financial redress for four hundred thousand dollars for the alleged slanderous remarks made against him in one of my broadcasts of late July. Now, the irritation comes not from the suit against me but the fact that the American Broadcasting Company, and the Oklahoma Oil Company have been named as defendants.

Risberg is a professional sneak who claimed in testimony in the child custody hearing that he followed Mrs. Shirley Champagne and myself to my home on two occasions. Risberg, I will repeat, is a liar. All right, his testimony contradicted itself time and time again during the course of the custody hearing but as a professional sneak or smook, I don't think he would find an elephant in a phone booth, but beyond the contradiction in his testimony, he is a liar in his filthy charges against a fine young woman and against myself. Now, this suit has all the earmarks of a harassment. It includes the Oklahoma Oil Company and the American Broadcasting Company. The Oklahoma Oil Company does not sponsor this program. It is merely a participating advertiser, just as a spot commercial and a station break does not give the advertiser any control over the station break or the station identification, so the Oklahoma Oil Company has no control over the editorial content of this program. Now, I'd like to remind you of the case from which this suit for slander arises or sprang. A Carl Champagne filed suit for divorce against a Shirley Champagne charging cruelty. In a child custody hearing before Judge Covelli, my name was associated with Mrs. Champagne's and I was accused of trysting with her in my apartment on two well publicized occasions by this professional sneak, Robert Risberg, an employee of a detective agency. Risberg had obviously been hired by the Champagnes or their representatives or Sham Pawn Ya is the name of

these people. After I pointed out on the air the inconsistency involving me with a child custody hearing and not the divorce, the bill for divorcement was changed, charging Mrs. Champagne with adultery. Now, her own husband filed suit against me for a quarter of a million dollars, for alienating his wife's affections. I would like to point out that the Chicago American gave it the widest possible publicity even to the point of even endeavoring to get my ex-wife to make a statement that the breakup of our marriage was caused by my promiscuity. She refused to do so. Also a doctored picture was shown, showing me the most luxuriously curly hair and wavy hair that you ever did see and an attempt was also made to bribe the carhops in my apartment building to identify a picture of Mrs. Champagne as having been on the premises with me, also without success. Now, prior to the law suit of any kind, Mrs. Champagne called me to tell me her wrong husband and his family were threatening to involve me in a law suit unless she gave up her child. I told her that her first concern was to her child—must be for her child and not to consider my comfort or convenience in any action she might take. Then I was contacted by Thomas Rosenberg, a lawyer, who informed me that the uncle of a long dissatisfied and lonesome Carl Champagne, Anthony Champagne, who numbers among his clients hoodlums, had offered to leave me out of the proceedings if I would promise to lay off some of the west side hoodlums. I refused. The Champagne family helped by the wronged husband's father, a doctor, have admitted their association with west side hoodlums of the most vicious type. The uncle of Carl Champagne, Tony Champagne who the Chicago American itself has listed as representing hoodlums, keeps injecting himself into the legal proceedings though he is not the attorney of record and I charged before that I was being mousetrapped, a charge which, by the way, there is an interesting thing about this suit. It seems

that the alienating of a wife's affections—a wife now-a-days, you girls should take certain exception to this, a wife now is worth two hundred and fifty thousand dollars, the loss of her; but the reputation of a twenty-four year old professional sneak is worth four hundred thousand dollars. So you girls are worth a hundred and fifty thousand dollars less than a junior grade detective for one of our local agencies." (R4, Abs. 12)

Petitioner said in his telecast on September 12, 1955:

"Well, I was in court today. I am a witness in a case, Carl Champagne versus Shirley L. Champagne, and I have been given to understand that from I don't know how many thousands of lawyers, and I think some how suddenly, I used to think the world was full of doctors, now I think the world is full of lawyers. I don't know where all of the doctors have gone to. Right now I need the lawyers, later on I'll probably need the doctors again, but anyway, the lawyers have impressed upon me and they did it with sticks beating on the top of my head that I am not—it's not within my province to comment on the activities because I am now a part of them and the fact that I have been called and under subpoena and an under the jurisdiction of this court, I am not in a position to comment on the proceedings." (R4, Abs. 16)

Petitioner said in his telecast on September 13, 1955:

"The last couple of days I have been in the Superior Court testifying in the case of Carl Champagne v. Shirley Champagne. It's not a divorce case, it's a hearing for temporary child custody and I have expressed publicly at times bewilderment as to my name has become so involved in the course of this trial. If the allegations against me were true I could see where it would be possible that my name would be brought up at a divorce hearing, but this is not that and there has been times when the child—that child

that I have been wonder—was wondering that the custody fight was about might not be me, my name has been mention in the course of the action so many times.

I testified to nothing that I haven't said on this publicly on this program and to the press any number of times. I testified truthfully to the fact that I know Mrs. Shirley Champagne and that she is a friend of mine, that I have seen her from time to time as you always do see friends. I wasn't permitted, of course, to further my statement but I would like to say at this time that I have every respect for Mrs. Champagne, the highest respect for her, I consider her a firm friend and I want to have her consider me as her firm friend and I certainly—in her period of trouble—would not be one to deny that friendship. I think she was an excellent woman and I think she is a fine mother, as well." (R4, Abs. 17)

The present contempt proceedings were commenced on November 1, 1955 and were shortly followed by the issuance of a rule to show cause by Judge Covelli accusing your petitioner of among other things making false comments. (R4, Abs. 38) Petitioner filed a jury demand and two petitions which raised various objections to the rule including prayers for a change of venue from Judge Covelli. (R4, Abs. 20, 39). He filed no answer, however, and he admitted having made the statements attributed to him with knowledge of the pendency of the divorce action. (R4, Abs. 211) Petitioner disclaimed any intent to influence or intimidate the judge or the witnesses and stated that his motive was to defend himself before his television public against the charges of adultery which were being made at the trial and which were being reported in a Chicago newspaper in a manner which petitioner considered unfair. (R4, Abs. 194, 195, 196, 197, 200, 201, 202, 203, 204, 206, and 207)

He thought that the charges would ruin his career, and therefore his remarks could not be saved. (R4, Abs. 227) The petitioner introduced into evidence several clippings from the Chicago American, a Chicago daily newspaper, to show how the Chicago American was utilizing the Champagne case to destroy petitioner on his television show by headlines such as, "Accused of Misconduct with Model", (R4, Abs. 207) and making remarks such as "as usual Duggan, the Fearless Fosdick of TV was not on the premises". (R4, Abs. 147) The petitioner offered further proof of his controversy with the Chicago American, but it was refused (R4, Abs. 206).

At the hearing on the rule to show cause, petitioner attempted to show that his statements were true. Offers to prove same were refused. (R4, Abs. 117, 166, 171, 192) As to his charge that the Champagnes had "court-admitted hoodlum connections" it appears from the record that Anthony Champagne, Dr. Carl Champagne and Carl Champagne, after having testified that they knew Tony Accardo, Charles English and Sam "Mooney" Giancano, denied any knowledge of them as criminals. (R4, Abs. 105, 106, 108, 109, 110, 159, 163, 175, 178) Petitioner sought to introduce evidence that these individauls did in fact have criminal records. This evidence was excluded by the Court. (R4, Abs. 158, 160, 161, 167, 168) It also appears that in his testimony Anthony Champagne had denied having made any offer to petitioner to keep the latter's name out of the divorce proceedings. (R4, Abs. 128, 129) The Court excluded evidence offered by petitioner to show that Anthony Champagne and Charles English had made offers to keep petitioner's name out of the custody hearing if he would lay-off the hoodlums of his TV show. (R4, Abs. 108, 117, 118, 132, 164, 169, 172, 258, 259)

It was agreed by Judge Daniel Covelli, the trial judge in the divorce case, that the court was not intimidated by anything the petitioner said. (R4, Abs. 201)

The Trial Court found Thomas Duggan guilty of contempt and sentenced him to 10 days in jail and to pay a one hundred dollar fine. (App. A, p. 6a) In its order the Court said that Thomas Duggan had made false utterances. (App. B, p. 9a)

The Supreme Court of Illinois on direct review ruled on all constitutional issues and held that Thomas Duggan was guilty of contempt, but reversed the trial court due to its faibure to grant a change of venue: (App. B, pp. 17a, 19a)

On a retrial in the lower court on a new rule to show cause containing the same allegations as before, it was stipulated that the record in the first trial would constitute the record in the second trial, but that counsel would be permitted to make further offers of proof. (R18, Abs. 15, 17) Petitioner filed a new petition for a change of venue and a jury demand. (R18, Abs. 5, 7, 8) The petition was denied. (R18, Abs. 6)

Testimony in the second trial confirmed that Tony Accardo, Charles English and Sam Giancano were friends and associates of the Champagne family, (R18, Abs. 23, 27, 28, 29) but offers to prove that they were hoodlums were refused. (R18, Abs. 18, 19, 25, 27) Judge Covelli, the trial judge in the custody hearing testified that no witness approached him because of remarks of Thomas Duggan and that no one interfered with his decision in the child custody hearing between the Champagnes. (R18, Abs. 33). He also said he did not watch the telecasts. (R18, Abs. 30)

THE FEDERAL QUESTION WAS RAISED IN THE LOWER COURTS.

The Federal Question was raised in the Trial Court and in the Supreme Court of Illinois.

A. IN THE TRIAL COURT.

Petitioner raised the Federal Question in the first trial before the trial in two petitions (R4, Abs. 23, 42) and a motion to quash the rule to show cause (R4, Abs. 47, 48) wherein petitioner stated: "That among the fundamental rights guaranteed citizens of the United States in criminal trials in the federal courts are the following: . . . freedom of speech and the press (1st Amendment) . . . That each and every one of the above enumerated fundamental rights are, therefore privileges or immunities of citizens of the United States and an essential element of due process of law . . . which must otherwise be recognized and enforced in all criminal trials in the state courts by reason of the Fourteenth Amendment to the Constitution of the United States, Section 1, which provides . . ." After the trial petitioner again raised the Federal Question by Motion in Arrest of Judgment. (R4, Abs. 23)

By stipulations those petitions and motions were made part of the record in the trial in this case (R18, Abs. 15, 17) and an additional petition raised the questions before the trial in this case (R18, Abs. 10-12) wherein petitioner alleged; "20. That the said Judge Daniel A. Covelli, in entering the said order of October 10th, 1955, violated the rights granted the said Thomas D. Goss, also known as Tom Duggan, under the First Amendment of the Federal Constitution . . . in that the Court attempted to abridge the privileges of the said Thomas D. Goss . . . as a citizen of the United States and deny him the right to free

speech . . . 28. That the order requiring the defendant to answer the rule to show cause herein is a void order because it violates . . . the Fourteenth Amendment to the Constitution of the United States, . . ."

Said petitions and motions were denied. (R4, Abs. 29, 46, 47, 53)

B. IN THE SUPREME COURT OF ILLINOIS.

Petitioner raised the Federal Question in his brief filed in the Supreme Court of Illinois in the first case, namely, *People of the State of Illinois* v. *Goss*, 10 Ill. 2d 533. The Supreme Court of Illinois took note of this in its opinion (R6) (App. C, p. 7a) where it said: "Our jurisdiction is based upon the claim that the order deprived him of the rights of free speech guaranteed by the First Amendment to the Federal Constitution, as made applicable to the States by the Fourteenth Amendment." The Court ruled in its opinion that the petitioner was not denied his rights under the Federal Constitution. (R9-14) (App. C, pp. 11a, 17a) Your petitioner raised the same points in his brief before the Supreme Court of Illinois in the case before this Court and the Supreme Court of Illinois in its opinion (R. 20) (App. C, p. 19a) said, "In the prior review, all substantive and constitutional issues raised were resolved and decided against the Plaintiff-in-Error on the grounds that his television utterances created a clear and present danger to the administration of justice."

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

We believe this Court should issue a Writ of Certiorari in this case because:

I.

The decision of the Court below finding the petitioner in contempt of court for telecasted utterances is not in accord with the applicable decisions of this Court in respect to the necessity of there being a clear and present danger to the administration of justice before petitioner's right to free speech or press is curtailed.

II.

This being a case of first impression, we believe that this case presents significant federal questions of law not heretofore decided by this Court which ought to be decided. Among these are:

(A) Whether a telecasted oral statement stands on the same footing as the printed word in respect to presenting a clear and present danger to the administration of justice.

(B) Is a man accused of a serious social impropriety to refrain from justifying himself when the accusation is made in the course of judicial proceedings in which he is not a party, particularly when such accusation might bring such odium upon him that his livelihood is imperiled and when silence on his part might mean a confession, notwithstanding his utterance might incidentally affect judicial proceedings.

(C) Whether a person declared to be guilty by the Supreme Court of Illinois after his first trial for an indirect criminal contempt, upon remandment for failure to grant a change of venue is entitled to a change of venue and a jury trial.

ARGUMENT.

I.

THE DECISION OF THE SUPREME COURT OF ILLINOIS IN THIS CASE IS NOT IN ACCORD WITH THE DECISIONS OF THIS COURT IN CRAIG v. HARNEY, 331 U.S. 367, BRIDGES v. CALIFORNIA, 314 U.S. 252, PENNEKAMP v. FLORIDA, 328 U.S. 331, AND NYE v. UNITED STATES, 313 U.S. 33.

(A) The Court below declared that the utterances of Thomas Duggan were a clear and present danger to the administration of justice thereby paying lip service to the rules laid down by this Court. The Supreme Court of Illinois quoted its prior rulings which held publications contemptuous if they were calculated to impede, embarass or obstruct the due administration of justice and then stated in its opinion: "The publication must tend to affect the outcome of a pending case." (R8) (App. B, p. 10a) The cases cited by the Supreme Court of Illinois were *People* v. *Wilson*, 64 Ill. 195; *People* v. *Gilbert*, 281 Ill. 619; *People* v. *Doss*, 382 Ill. 307; and *Storey* v. *People*, 79 Ill. 45. There is of course no reference to the "clear and present danger" test in these cases. In actuality the Court below has followed the "tendency" test set out in *Toledo Newspaper Co.* v. *United States*, 247 U.S. 402. This theory is in direct conflict with the rules laid down by this Court in *Bridges* v. *California*, 314 U.S. 252, 259, where this Court said:

> "What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished."

The Supreme Court of Illinois in this case is in direct conflict in its interpretation of the 'clear and present danger' test with the Court of Appeals of Maryland in *Baltimore Radio Show Inc.* v. *State*, 193 Md. 300.

It is evident that the two concepts in question, namely freedom of speech and the right of a State to administer the law without interference from the outside, clash and one must give way to the other. Doubtless that is what is responsible for the "clear and present danger" rule discussed in the above cited cases.

Looking to the facts of this case, we find that the case, at the time the words were telecast was within the aegis of a judge who was not affected by the words. We know this because he said so, and because he gave custody to the paternal grandparents. He also said that he did not watch the telecasts. There was no clear and present danger so far as he was concerned.

The Supreme Court of Illinois hinted that the utterances might affect a jury in some manner. However, the petition for custody was being heard by the trial judge without a jury and the record does not show that there was a jury demand filed.

Finally the court below thought the utterances might effect witnesses in a manner adverse to the appropriate administration of the laws. The record actually shows that the utterances of the petitioner referring to the witnesses were made after each of the witnesses had testified and therefore could not have affected their testimony.

Although as previously pointed out the petitioner was charged with making remarks calculated to bring odium upon the testimony of witnesses, we believe the question should be, did the remarks of the petitioner concerning

the witnesses constitute a clear and present danger to the administration of justice? There are no cases to our knowledge holding that remarks pertaining to or characterizing of witnesses can constitute a "clear and present danger". Certainly the right to freedom of speech cannot be curtailed indefinitely in respect to the right of a comment concerning a witness at a trial.

The only witnesses mentioned in the telecast were Donald Risberg, Anthony Champagne, an uncle of the plaintiff and Dr. Carl Champagne, the father of the plaintiff in the divorce action.

Risberg who testified on July 28, 1955, after hearing of petitioner's comments sued petitioner for slander. This is the fellow who petitioner said on July 28, 1955, was "a 24 year old professional sneak and liar."

Dr. Carl Champagne and Anthony Champagne testified on July 27, 1960 and petitioner's remarks concerning them were made after that date. Nothing derogatory was said of Dr. Carl Champagne unless it was that petitioner said that the Doctor treated known hoodlums and they associated with him. Of Anthony Champagne, petitioner said he also associated with and represented hoodlums and had made an offer to drop petitioner's name from the suit if petitioner would 'lay off' the hoodlums.

To suppose that the uncle, Anthony Champagne and Dr. Carl Champagne, the father of the plaintiff, who admitted their association with Tony Accardo, Charles English and Sam Giancana, notorious hoodlums and gangsters, were so cowed as to present a clear and present danger to the administration of justice is to assume something that is very obviously not consistent with reason. We ask this Court to take judicial notice that the uncle, Anthony Cham-

pagne, is the same attorney who invoked the Fifth Amendment and refused to answer questions of the Select Committee On Improper Activities In The Labor Or Management Field, Eighty-Fifth Congress commonly called the McClellan committee on the ground that he might incriminate himself.

The petitioner offered to prove the truth of his statements but the trial court refused this offer of proof.

In this case as previously established the petitioner's comments which may or may not have been heard by the witnesses were after each of the witnesses testified and the facts were such that even if the witnesses were recalled or testified later in the divorce case there was no danger of the witnesses becoming reluctant or vacillating witnesses for the plaintiff.

The facts clearly show that there was no clear and present danger to the administration of justice as the result of the telecasted statements of the petitioner. Certainly there was no present danger that the trial in respect to the temporary custody of the Champagne child would be effected adversely to the plaintiff. Further, at the time of petitioner's trial, the court knew petitioner's words had had no effect on the court or witnesses.

B. The decision of the Court below is in further conflict with the decision of this Court in *Craig* v. *Harney*, 331 U.S. 367, as it failed to take into account the environment which prevailed at the time the utterances were made. The record is replete with references that the petitioner was a television commentator who had repeatedly waged a public fight against known hoodlums such as Sam Giancana, Tony Accardo and Charles English. The record also shows that proof or offers of proof were made to establish

that if petitioner would "lay off" said hoodlums, the court actions would cease and petitioner's name would be dropped.

The record also shows that a daily newspaper, The Chicago American, that was openly antagonistic towards petitioner, was having a field day in exploiting the testimony concerning petitioner in the court case.

It would appear under *Craig, et al* v. *Harney*, 331 U.S. 367, 376, where the court said, "We agree with the court below that the editorial must be appraised in the setting of the news article which both preceded and followed it. It must also be appraised in light of the community environment which prevailed at that time," that any remarks by petitioner should be considered in the light of his occupation and reputation as one opposed to the power of known hoodlums, and his controversy with the Chicago American.

C. Petitioner's offers to prove the truth of his telecasts were refused although he was charged with and found guilty of making false comments.

The rule to show cause charged the petitioner with making remarks calculated to bring odium upon the testimony of witnesses and it was on these grounds that the Trial Court found the petitioner guilty of contempt.

In its opinion the Supreme Court of Illinois *for the first time* found that the utterances of the petitioner constituted a clear and present danger to the administration of jusice. The petitioner was never so charged in the trial court nor was any offer of proof made by the State to substantiate such a finding.

II.

(A) WHETHER TELECASTED STATEMENTS STAND ON THE SAME FOOTING AS THE PRINTED WORD IN RESPECT TO PRESENTING A CLEAR AND PRESENT DANGER TO THE ADMINISTRATION OF JUSTICE.

It is not the fact that words are spoken or written that make them contemptuous, but it is the determination that the uttering of the words or the printing of them constitute a clear and present danger to the administration of justice.

The important factors to be considered are the number of persons who are exposed to the words and the relative effect of the written or spoken word.

The number of listeners to one out of four Chicago television stations between 11:00 P.M. and 12:00 midnight on week days certainly is insignificant compared to the newspaper circulation of a daily newspaper in the Chicago area.

Courts have made clear that there is a difference between libel and slander. The written word has the quality of durability and may be reread by others when the matter is called to their attention. Past editions of newspapers are readily available to the public. On the other hand words spoken on a television show on one of four channels in the Chicago area late at night are very apt to be taken lightly and are not a matter of record to be reheard or reread by the public.

There was no showing that any of the witnesses or the trial judge heard the telecasts. However, the facts do show that neither the witnesses or the trial judge were affected by these telecasts in a manner which tended to

show that there was any clear and present danger to the administration of justice.

(B) IS A MAN ACCUSED OF A SERIOUS SOCIAL IMPROPRIETY TO REFRAIN FROM JUSTIFYING HIMSELF WHEN THE ACCUSATION IS MADE IN THE COURSE OF JUDICIAL PROCEEDINGS IN WHICH HE IS NOT A PARTY, PARTICULARLY WHEN SUCH ACCUSATION MIGHT BRING SUCH ODIUM UPON HIM THAT HIS LIVELIHOOD IS IMPERILED, AND WHEN SILENCE ON HIS PART MIGHT MEAN A CONFESSION, NOTWITHSTANDING HIS UTTERANCE MIGHT INCIDENTALLY AFFECT JUDICIAL PROCEEDINGS.

So far as we are aware, this is the first case where an alleged contemnor has himself been charged with wrongdoing, the character of which would affect him adversely, particularly where, as here, silence on his part would amount to a confession of guilt. Risberg, the detective, had testified on July 28, 1955, to facts which tended to prove that petitioner was the person with whom Mrs. Champagne had committed adultery. The plaintiff then amended his complaint to one charging adultery. The Chicago American and other Chicago newspapers gave a great deal of publicity to these charges.

Petitioner was not a party to that suit. In the view we take of the matter, silence on his part would amount to a confession, and his sponsors and television audience would believe he had committed adultery with Mrs. Champagne. Inaction on his part would amount confession, a confession which might well affect his livelihood. Petitioner testified that he made his remarks to protect himself and that he could not wait to defend himself. He was not a simple volunteer attempting to affect the course of litigation. The question posed here for the first time is whether

one who is accused of a moral wrong must remain silent no matter how he is affected because he utters words in his own defense of such moral wrong even if the litigation is incidentally affected. There are compelling reasons for the widest exercise of free speech in the environment which existed at the time the petitioner exercised his right to freedom of speech.

(C) WHETHER A PERSON DECLARED TO BE GUILTY BY THE SUPREME COURT OF ILLINOIS AFTER HIS FIRST TRIAL FOR AN INDIRECT CRIMINAL CONTEMPT, UPON REMANDMENT FOR FAILURE TO GRANT A CHANGE OF VENUE IS ENTITLED TO A CHANGE OF VENUE AND A JURY TRIAL.

It is contended that in determining whether an indirect criminal contempt has been committed there is an issue of fact to be determined and that due process of law requires that factual issues be tried by a jury when demanded by the defendant.

At common law there was no issue of fact or trial in a summary conviction for a direct contempt, and if there was any issue of fact the defendant could only be proceeded against by indictment and trial by jury. In *Rex* v. *Revel*, 1 Strange 420 (1721), it was held that when abusive words "are spoken in the presence of the judge he may commit, but when it is behind his back the party can only be indicted."

The Supreme Court of Illinois in *People* v. *Gholson*, 412 Ill. 294, decided that evidence can be received in both direct and indirect contempt proceedings, and the doctrine of purgation by oath in indirect contempt proceedings was abolished. It follows that by removing the chief element which made indirect criminal contempt action *sui*

generis that there are issues of fact to be determined, and there arises a situation in which the accused was entitled to be tried by jury at common law. It is a most dangerous doctrine to hold that a Court may exempt contempt proceedings from the ordinary rules applicable to other criminal cases in situations where the court does not have judicial knowledge of all the facts. Constitutional rights should not be frittered away by permitting that to be done under the guise of contempt proceedings that cannot be done directly in an ordinary criminal trial.

In *In re Murchison et al.*, 349 U.S. 133 at page 136 this Court said:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case. . . ."

The petitioner requested a change of venue in his first trial. The Supreme Court of Illinois in reviewing the first case remanded the case for the failure of the trial court to grant a change of venue. The petitioner requested a change of venue in the trial court again in this case. The trial court again denied the change of venue but transferred the case to another judge who tried the petitioner but from whom your petitioner had requested a change of venue. The end result was that petitioner was still tried by a judge from whom he had sought a change of venue on the grounds of his prejudice against him.

As a final note we would like to call attention to the Court that the Supreme Court of Illinois in the first case held your petitioner guilty of contempt but said that he

should have been given a change of venue, and therefore remanded the case for a new trial. To put its decision in the language of our own western stories: "Let's give the man a fair trial and then hang him." The trial judge in this case, saying that he was bound by what the Supreme Court of Illinois had said in the first case, adopted the rulings of the first trial judge from whom petitioner was allegedly supposed to have been given a change of venue, found the petitioner guilty and imposed the same punishment, ten days in jail and a $100.00 fine.

The denial of a jury trial, the denial of a change of venue, and the finding of the Supreme Court of Illinois of petitioner's guilt before his trial has deprived your petitioner of his right to due process of law.

Respectfully submitted,

EDWIN R. ARMSTRONG
Attorney for Petitioner.

Of Counsel:
SOL R. FRIEDMAN,
I. S. FRIEDMAN.

APPENDIX.

THE OPINIONS OF THE COURTS BELOW.

The oral opinion given by Judge Daniel Covelli at the termination of the First Trial is appended hereto as Appendix A, p. 7a.

The opinion of the Supreme Court of Illinois in the First case, 10 Ill. 2nd 533, 141 N.E. 2d 385 is appended as Appendix B.

The Trial Court in this case did not render an opinion.

The opinion of the Supreme Court of Illinois in this case 20 Ill. 2d 224, 170 N.E. 2d 113, is appended as Appendix C, p. 19a.

APPENDIX "A".

Opinion of Judge Covelli at the termination of the first trial in the Superior Court of Cook County.

(Appears at R4. Abs. 261 to 267)

This case comes on this morning for sentence, a finding of guilty having been entered at the last hearing on Wednesday.

First of all, this Court, on behalf of the bar and bench in this community, wishes to commend Mr. Coghlan for his efficient, lawyer-like method of presenting to the Court this serious matter. Many of our people will not understand at this time the importance of this situation. Most of our people are like sheep, led and guided by others. The day will come, however, when they are involved in litigation themselves, when they will realize that the Court had no alternative but to do what it is going to do today.

While I am on the subject I wish to advise the public that State's Attorney Gutknecht also did a service to

this community when he refused to investigate these charges. I say he did a service to the community because I feel that no one could have presented it more efficiently and lawyer-like than did Mr. Coghlan. I talked to State's Attorney Gutknecht myself after Mr. Barbera had filed several petitions calling for this investigation. This Court refused to entertain the filing of the petitions by Mr. Barbera because the Court felt that he was interested in the plaintiff in the case and might not be able to present the matter in an unbiased fashion; and for that reason I called upon the State's Attorney. The State's Attorney has a duty to the people that elected him to conduct investigations of this kind. The State's Attorney told me that he would appoint an Assistant State's Attorney to investigate this matter and report to the Court. Two days later an Assistant State's Attorney called upon this Court in chambers and said, "Judge, I am ordered by my boss to inform you that he does not want any part of this investigation." I asked the Assistant State's Attorney what are the reasons. He shrugged his shoulders and said, "All I know, I am ordered to tell you that, and I am only an assistant and that is all I can tell you," and he walked out.

There was nothing else for me to do. I had two alternatives, either to shirk my duty to the people that elected me and let the thing go unchallenged or to appoint amicus curiae, which I did, and the amicus curiae has done a very splendid job on behalf of the community, although at this moment it might be a thankless job.

There has been quite a bit said by the attorney for the respondent about animosity on the part of the Court toward this respondent. This Court has no animosity toward the respondent. This Court has no animosity toward anyone in this entire world. If one would only read from very fine works, medical works and philosophical works, you will find that all the authorities agree that animosity is akin to hate, and when an individual hates another individual the individual who is hated isn't hurt at all, because many times he does not know that the

other person hates him, so of course the hated person does not suffer. Or if he does know he just doesn't care, so the hated person doesn't care and doesn't suffer. The one who does suffer is the one who does the hating, and he is the one that gets ulcers, not the one that is hated. Thank God I am not suffering from ulcers. I hate no one. I have been told by my religion and my dear mother to turn the other cheek, and that is what I have done for months; and that is what I propose to do from now on. So there is no animosity in this court for the respondent or anyone else.

In addition to that counsel for the respondent told a packed courtroom for four days that he wanted to prove that this Court had said in the Celtic Bar that this Court proposed to send the respondent away for a long time. I knew I had never made such a statement. I knew I hadn't been in the Celtic Bar for fifteen to twenty years. I also knew that I had had lunch and dinner in the Celtic Restaurant many times with friends but not in the bar for twenty years. So when counsel said "I want to prove that your Honor said in the Celtic Bar that you would send my client away for a long time," this Court set aside all the rules of evidence and I said, "Mr. Friedman, I am going to give you an opportunity to prove that I said anywhere that I was going to send your client away for a long time." I new that there was no such proof. I knew that that statement by the respondent and his counsel was borne of a diseased or distorted mind and that it was not a fact. I waited four days for proof on that subject. Mr. Friedman has yet to come up with proof that this Court at any time said in the Celtic Bar or anywhere else that he would send this respondent away for a long time. If this Court had made such a statement this Court would not only have disqualified itself to act in this case, but this Court would not be fit to wear the robe which the Court is now wearing. There has been no proof of any such statement. It just illustrates the sort of thing that this Court was subjected to for four days.

The Court has made an exhaustive search in the hope of finding some authority that would permit me to dis-

charge the duties of my office, maintain the honor and dignity of the Court, and still grant to the respondent a motion for change of venue or a trial by jury. Under the law of this state, with one exception, the mandate of the law is that in contempt situations motion for change of venue or trial by jury must be denied. A petition which the respondent filed in this cause expressly confesses that the facts in this case do not come within the exception. Under the circumstances this Court had no authority to grant the motion for a change of venue and was required under its oath to deny the motion. I am further fortified in my position with the knowledge that on three occasions Mr. Coghlan has expressly stated that in an unbroken line of decisions from the formation of this state to the present time there is no authority under the facts in this case which would authorize me to grant a change of venue or trial by jury; and Mr. Coghlan has called upon Mr. Friedman to show any one authority to the contrary. Up to this moment no authority has been cited by the respondent which would authorize me under the laws of the State of Illinois to grant either of the motions.

And I wish to add that as eager as I was to get rid of this case, as eager as I was to pass it on to one of my brethren on the bench, I felt that had I done so, when the law said I must not do so, I would lose not only the respect of all the members of the bar, not only the respect of my brother judges, but I would lose my self-respect. It is the duty of every judge to maintain order in his own courtroom, in his own house; it is the duty of every judge, regardless of the consequences, to protect litigants in his courtroom. How could I ask another judge of this bench, another judge of this court, to do my work, which I took a solemn oath to do myself? They would be justified in saying, "Judge Covelli doesn't have the courage to be a judge. He is not fit to be on the bench." And as eager as I was to get rid of it I just couldn't, regardless of what the consequences may be.

However, inasmuch as prejudice in the Court is charged and I am powerless, and was powerless, to grant the mo-

tion for a change of venue, it is my desire that Mr. Duggan suffer no penalty in any form until the correctness of the ruling of this Court is passed upon by all the courts of review in the land.

The respondent has failed to file an answer to the rule to show cause. He has confessed in open court that the utterances charged against him were made on the dates designated, with a conscious knowledge of the pendency and actual hearing of a motion before this Court, and with a further conscious knowledge that his utterances referred to witnesses on the subject matter of a motion pending in the actual hearing before this Court. And, further than that, he admitted under oath in this courtroom that a battery of his lawyers had told him repeatedly, that if he made those utterances he would be violating the law. He admitted that himself, on the witness stand. His lawyers told him repeatedly, "You must not talk that way about witnesses while a case is going on." He knew that, but knowing that he disregarded the advice of his own lawyers. He decided that he is above the law, the law that applies to all other citizens does not apply to this respondent. If a lawyer tells you that you must not do a thing I am sure that as a good citizen you don't do it. But this man said from this witness stand under oath, "My lawyers told me I must not do it. My lawyers told me I would be violating the law. But I did it anyway, and I will do it again, regardless of what the law is; the law does not apply to me." This is his attitude. He has been granted a hearing and an opportunity to defend or to introduce such mitigating testimony as was competent in open court. As a matter of fact I permitted his counsel a large leeway. I permitted him to offer all kinds of evidence that was not admissible under any stretch of the rules of evidence. Those of you who are lawyers and were here know what the respondent's attorney subjected this Court to for four days with a design, no doubt, to provoke the anger of the Court, which probably would have been justified, had it not been that I had made up my mind that no one would provoke me

in court or out of court to any extent that the respondent did not get a fair trial, so I just had to take it.

In the actual hearing of the rule to show cause filed herein and in the presence of the respondent competent evidence to sustain the charges contained in the rule to show cause has been introduced. No sufficient proof has been introduced to exculpate the respondent of the charge. Had the respondent stepped on the witness stand and said, "I did the things I did against the advice of my counsel. I realize now that I must not talk about witnesses while a case is in progress, and, Judge, I promise you that I won't talk about witnesses while a case is in trial," the Court certainly would have taken that into consideration and given it a great deal of consideration, because all of us make mistakes; but this man to the last moment, to this very moment, remained silent and refuses to admit that he violated the law, although his counsel has told him he has, and he refuses to say, "Judge, I won't violate the law again." He still insists by his silence that he is above the law. That we can not have, not in my court, so long as I sit as a judge. I have found, therefore, that the respondent is guilty of criminal indirect contempt of this court, or as charged in the rule to show cause filed herein.

It is the order of this Court that the respondent, Thomas Duggan Goss, be sentenced to ten days in the County Jail and, in addition thereto, that he pay to the clerk of this court a fine of $100.00. The finding of the Court is very lenient, the sentence is very light, because it is the first offense of this kind to come before the courts over televisi n. Upon the filing of his bond in the amount of $100.00 the mittimus is hereby stayed thirty days, or until a writ of error herein is made a supersedeas.

Mr. Coghlan, you have given my clerk an order. I will read it, and the order will be entered within the next fifteen minutes. Take the respondent in custody until he makes bond of $100.00.

APPENDIX "B".

Opinion of the Supreme Court of Illinois in the first case, 10 Ill. 2d 533, 141 N.E. 2d 385.

Per Curiam: Thomas D. Goss, also known as Thomas Duggan and herein referred to as plaintiff in error, brings this writ of error to reverse an order of the superior court of Cook County adjudging him guilty of contempt of court, and sentencing him to ten days in the county jail and a fine of $100. Our jurisdiction is based upon the claim that the order deprived him of the rights of free speech guaranteed by the first amendment to the Federal constitution, as made applicable to the States by the fourteenth amendment.

During the year 1955 the plaintiff in error appeared regularly on an evening television program broadcast five nights a week from a Chicago station. This program was watched, according to the testimony of plaintiff in error, by some 200,000 persons within the Chicago area. The charge of contempt was based on certain remarks made by plaintiff in error in the course of these broadcasts during July and August, 1955, with reference to a divorce action then being tried in the superior court.

On July 26, 1955, Carl Champagne filed a complaint for divorce against his wife, Shirley, in the superior court of Cook County, charging her with cruelty. On the same date he made a motion that he be g nted custody of their child, and a hearing on this motion was held before Judge Daniel A. Covelli. The hearing commenced on July 26 and lasted until July 29, at which time the court entered an order granting temporary custody to Carl Champagne's parents, and continuing the case until September 12 because the testimony on the part of the plaintiff had

not been concluded. On the latter date the hearing was resumed and it continued until September 20, on which date another order was entered which also granted temporary custody to the paternal grandparents. The complaint for divorce was still pending and undisposed of at this date.

On July 28 one Robert Risberg, a private detective, testified on behalf of Carl Champagne that on June 3 Mrs. Champagne had spent the hours of from 2:30 A.M. until 6:00 A.M. in the apartment of plaintiff in error, and that on June 11 she had spent the hours of from 2:00 A.M. to 5:45 A.M. there. On July 29 the complaint was amended to charge Mrs. Champagne with having committed adultery with John Doe on the dates mentioned above. Cross-examination of Risberg began on July 28 and was completed on the following day. In a broadcast on the evening of July 28, plaintiff in error stated of Risberg with respect to his testimony in the case that he was a "professional sneak and liar." In subsequent broadcasts plaintiff in error again referred to Risberg in these terms.

On July 28 there also testified on behalf of Carl Champagne, his father, Dr. Carl Champagne, and his uncle Anthony Champagne. On his broadcast of August 1 plaintiff in error referred to Carl Champagne and his relatives as a family "with court-admitted hoodlum connections." and referred to Dr. Carl Champagne as "a known associate of hoodlums." He further stated that Anthony Champagne had offered to keep the name of plaintiff in error out of the case if he would "lay off the hoodlums" in his broadcasts, but that plaintiff in error had on the contrary promised Mrs. Champagne to do everything in his power "to prevent the legal kidnaping of her child." The plaintiff in error also made statements denying that he had committed adultery with Mrs. Champagne and expressing sympathy for her.

In the course of the same broadcast plaintiff in error also stated that Carl Champagne had filed an action against him for alienation of affections, and in a broad-

cast of August 30, he stated that an action for slander had been filed against him by Risberg.

The present contempt proceedings were commenced on November 1, 1955, with the issuance of a rule to show cause by Judge Covelli. Plaintiff in error filed two petitions which raised various objections to the rule. He filed no answer, however, and he admitted having made the statements attributed to him with knowledge of the pendency of the divorce action. Plaintiff in error disclaimed any intent to influence or intimidate the judge or the witnesses and stated that his motive was to defend himself before his television public against the charges of adultery which were being made at the trial and which were being reported in a Chicago newspaper in a manner which plaintiff in error considered unfair.

At the hearing on the rule to show cause, plaintiff in error attempted to show that his statement were true. As to his charge that the Champagnes had "court-admitted hoodlum connections," it appears from the record that Anthony Champagne, after having testified that he knew certain named individuals, denied any knowledge of them as criminals. Plaintiff in error sought to introduce evidence that these individuals did in fact have criminal records. This evidence was excluded by the court. It also appears that in his testimony Anthony Champagne had denied having made any offer to plaintiff in error to keep the latter's name out of the divorce proceedings. The court excluded evidence offered by plaintiff in error to show that such an offer had in fact been made.

In its order adjudging plaintiff in error guilty the court stated: "The public utterances and characterizations by the said Thomas Duggan Goss of the plaintiff and witnesses called in his behalf were false, completely foreign to the evidence presented, with a positive tendency and designedly calculated to bring odium upon the testimony of the witnesses produced by the plaintiff and to inspire distrust in their testimony; engender a public atmosphere of hostility incompatible with judicial proceedings; create in the public mind by false, incompetent and prejudicial

hearsay made without the safeguards of an oath or right of cross examination the belief that the plaintiff and those associated with him were of base character and that the plaintiff should not prevail in his cause; to create in the minds of witnesses fear and apprehension of being held to public scorn and ridicule and to exculpate himself from a charge amply sustained by the evidence."

The general principles governing contempt by publication have long been settled in this State. Under our decisions a publication is contemptuous only if it is "calculated to impede, embarass or obstruct the due administration of justice." (*People* v. *Gilbert*, 281 Ill. 619, 628.) The publication of scandalous or libelous matter concerning a court or a judge is not, without more, contemptuous. The publication must tend to affect the outcome of a pending case. (*Storey* v. *People*, 79 Ill. 45; *People* v. *Gilbert*, 281 Ill. 619, 628-629.) On the other hand, it is not necessary to show that an interference with the administration of justice has actually occurred, nor is it a defense for the contemnor to disclaim any subjective intention of producing that result. *People* v. *Wilson*, 64 Ill. 195; *People* v. *Gilbert*, 281 Ill. 619; *People* v. *Doss*, 382 Ill. 307, 314.

Judged by these standards there can be little question but that the statements made by plaintiff in error were contemptuous and, indeed, plaintiff in error does not seriously argue to the contrary. His remarks impugned the motives of Carl Champagne and his family, enlisted sympathy for himself and Mrs. Champagne, and reflected upon the character and veracity of the witnesses who testified for Mr. Champagne in the custody hearing. In the light of the statement by plaintiff in error that he would do everything in his power to prevent the "legal kidnapping" of the Champagnes' child, it is clear that he hoped to influence the outcome of these proceedings, in which he, though not formally a party, was personally involved. But whether the statements made on the broadcasts would deter witnesses from testifying in favor of Mr. Champagne, or incite them to do so, in either event

they would exert an outside influence upon the proceedings.

At the time of his statements the custody hearing had not yet been completed, and as the record shows it was probable that these same witnesses, or others, might subsequently be called to the stand. Indeed, the record shows that the testimony of one of these witnesses, Risberg, had not been completed before the time when the plaintiff in error first disparaged him. Furthermore, the divorce action proper, in which a jury trial may be had under our statutes, (Ill. Rev. Stat. 1955, chap. 40, par. 8,) was also pending at this time. The same witnesses attacked by plaintiff in error could be expected to be called by Mr. Champagne to testify at that stage of the proceeding. Under the circumstances, the remarks by plaintiff in error constituted an interference with the administration of justice. See *State* v. *Howell*, 80 Conn. 668; *In re Simons*, 248 Mich. 297; *In re Lindsley*, 75 Cal. App. 122.

The plaintiff in error contends, however, that his conviction violates his rights under the first amendment to the Federal constitution. In support of this contention he cites the decisions of the United States Supreme Court in *Bridges* v. *California*, 314 U.S. 252, *Pennekamp* v. *Florida*, 328 U.S. 331, and *Craig* v. *Harney*, 331 U.S. 367.

The first of these decisions involved two cases. In one of these, after the conviction of two members of a labor union for an assault on nonunion men, but before the time had arrived for sentencing, a newspaper published an editorial strongly denouncing the defendants and stating that the judge would be making a serious mistake if he granted them probation. The newspaper and its publisher were found guilty of contempt and the conviction was affirmed by the State Supreme Court. The United States Supreme Court reversed. The starting point of the decision was that in contempt cases, as in other areas, the validity of a restriction on speech must be justified under the "clear and present danger" test, which the court described as "a working principle that the substantive evil must be extremely serious and the degree of imminence extremely

high before utterances can be punished." (314 U.S. a 263.) So far as the question of substantive evil was concerned, the court conceded that a State was entitled to protect its judicial processes from interferences on the part of intimidating publications. But the court held that there was no likelihood in this case of the publication's producing such an effect, since the attitude of the newspaper on labor matters was so well known that even in advance of the editorial the judge would have expected adverse criticism if he should grant probation.

In the companion case, Bridges had been convicted of contempt for having published a statement that enforcement of a decision adverse to a union of which he was an officer would cause the union to strike. This statement was made while a motion for new trial was pending in the case. The Supreme Court based its reversal on the proposition that the "realities of the situation" were such that even before the statement by Bridges the trial judge must have been aware that a strike might result from his decision. We do not think that these decisions control the present case. There is no basis in the record for assuming that the persons who were the subjects of derogatory comments by plaintiff in error already had reason to anticipate that such comments would be made, either because of his known attitude toward them prior to the filing of the divorce action or because of any objective facts in the situation.

Nor do we think the *Pennekamp* case applicable. There the publication charged that in dismissing certain indictments a judge had been actuated by improper deference to the defendants, and that, in general, he displayed partiality toward the defendants in criminal cases. Although the defendants' trial was still pending, the criticism was only of action already taken, and it was on this ground that the Supreme Court reversed the conviction.

As we have already pointed out, the contemptuous remarks of the plaintiff in error were not limited to criticism of past action. The future outcome of the custody

hearing and of the divorce action depended heavily upon the testimony to be offered by the persons whom he attacked, and he had publicly announced his intention to influence that outcome.

In *Craig* v. *Harney* the conviction was for an editorial which unfairly criticized the action of a judge in directing a verdict in a case in which a motion for new trial was pending at the time of publication. As in the *Bridges* case, the Supreme Court based its decision upon the proposition that the judge had already been made aware from other sources that his decision would be unpopular. The decision was also rested upon a presumption that judges are not readily susceptible to intimidation. (See 331 U.S. at 376; cf. *Pennekamp* v. *Florida*, 328 U.S. 331, 349; *Bridges* v. *California*, 314 U.S. 252, 273.) In the present case, however, our concern is not merely with the effect of the statements in question upon the trial judge, for they were directed to parties and witnesses, to whom there is no reason to attribute a special degree of fortitude.

Plaintiff in error also relies on *Baltimore Radio Show* v. *Maryland*, 193 Md. 300, 67 A.2d 497, *certiorari* denied, 338 U.S. 912. That case involved news broadcasts relating to the murder of a child, which had aroused great public concern in the city of Baltimore. The broadcasts, which were based on information received from the police, revealed that a negro named James had been arrested, that he had confessed to the crime, that he had recently been released after serving a sentence for an earlier criminal assault on another child, and that he had admitted to police of having recently made an attack upon a white woman in the same area of the city in which the present murder had occurred. These statements were apparently true. After waiving trial by jury James was found guilty and sentenced to death, and his conviction was affirmed by the Court of Appeals. No motion was made at the trial to secure a change of venue and no complaint was made of the prejudicial character of the broadcasts. James's confession was admitted in evidence over objection. In subsequent proceedings, the Court of Appeals

reversed a judgment finding the persons responsible for the broadcasts guilty of contempt. The court held that since Jame's confession was admitted at his trial, since evidence of his previous offenses was admitted without objection, and since under Maryland law jurors would not necessarily have been disqualified for having formed an opinion based upon the broadcasts, their occurrence caused no prejudicial error in Jame's trial, and, moreover, would not have furnished grounds for a reversal even if James had been tried before a jury. Since this was so, the court reasoned, then the broadcasts must be regarded as protected under the clear-and-present-danger test. The court explicitly confined its opinion to publications involving only factual reports, reserving judgment as to statements which are "inflammatory, false, or designed to intimidate." (193 Md. at 331, 67 A.2d at 511.) Quite apart from this limitation, however, we are unable to accept the theory that the contemptuous character of a publication concerning a pending proceeding depends upon the effect of the publication in the proceeding itself.

In reviewing a criminal case, the publication is largely weighed in terms of its actual impact upon the jury. (But cf. *People* v. *Hrycink*, 5 Ill.2d 176.) Furthermore, the effect of the publication is not considered in isolation. The issue on review is principally the defendant's guilt, and if upon consideration of the entire record a court is not convinced that actual prejudice occurred, reversal will not be ordered merely to correct error. Reversal, moreover, while benefiting the defendant, has no disciplinary effect upon the offending publication.

Apart from the specific holdings of the decisions relied on, however, plaintiff in error points out that in laying down its standards of "clear and present danger" in the *Bridges* case the Supreme Court expressly rejected as a test the "reasonable tendency" of a publication to interfere with the administration of justice. (See *Bridges* v. *California*, 314 U.S. 252, 272-3.) And it is argued that a finding that a publication was "calculated" to so interfere is equally insufficient. The choice of words, of course, is

not important. We recognize, however, that these decisions of the Supreme Court must be taken as announcing generally that the standards hithero employed in some States are not rigorous enough to satisfy the demands of the first amendment. We do not conceive that the court intended to go so far as to require proof of an actual interference with the judicial process, as plaintiff in error suggests. (Cf. *Sinclair* v. *United States*, 279 U.S. 749, 762-4) Nor do we find any rejection of the view that "the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print." (*Patterson* v. *Colorado*, 205 U.S. 454, 462; cf. *Bridges* v. *California*, 314 U.S. 252, 271.) What is required, we think, is that the character of the publication and the circumstances in which it was made must be scrutinized with special caution and concern because of the potential threat to free speech which the contempt power obviously holds. Comment on pending cases, even if it is unfair and inaccurate, is not to be adjudged contemptuous unless it constitutes an "imminent peril" to the administration of justice. (*Craig* v. *Harney*, 331 U.S. 367, 376.) The social interest in the integrity and competence of the judicial process requires that courts and judges should not be shielded from wholesome exposure to public view, and if this interest is to be well served, then some latitude must be allowed for inaccurate and intemperate comment. But where comment is systematically designed to serve the contrary aim of thwarting the judicial process, then, as the Supreme Court has acknowledged, such comment is not constitutionally protected. See *Craig* v. *Harney*, 331 U.S. 367, 375.

The comments involved here were delivered by one who had a personal and professional interest in the decision in a pending action, and they were admittedly designed to affect that decision by a sustained and systematic attempt to prevent or impugn unfavorable testimony by vilifying any witness who should offer such testimony as well as the party in whose behalf the witness appeared.

On cross-examination plaintiff in error testified: "I knew that the case was pending from July 26th to September 20, 1955. All the remarks made by me were made with full knowledge that there was a case pending before this Court in regard to the subject matter of my comments. I knew that the witnesses I named, Risberg, Carl Champagne, Dr. Carl Champagne and Anthony Champagne, were witnesses, for plaintiff."

Plaintiff in error's bold defiance can best be gathered from his broadcast of July 29, 1955, which he admittedly published: "I was all set to make any number of comments on a certain child custody hearing that is going on over in the Superior Court in the county building which has brought my name into the Chicago American, if not into the other papers but I have some excellent legal advice that I better stop commenting on the testimony as it goes along I am,—I am going to go into the pokey. It seems to be there is some precedent in the Illinois courts as established in the Supreme Court of Illinois that regardless of how truthful and informative comments might be that you might make on a trial that is in progress that has no bearing on the case, you can go into the pokey. There is a number of excellent cases proving the point and so my lawyer has asked me to refrain from getting him in trouble as well as myself."

"When a case is finished courts are subject to the same criticism as other people; but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied." So wrote Mr. Justice Holmes in *Patterson v. State of Colorado*, 205 U.S. 454 at 463. As Justice Holmes has said many times in describing his theory of our system of justice "That the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether a private talk or public print." In this day and age of radio and television, to hold otherwise would be a dangerous precedent. We are in accord with much of the rationale expressed by Justice Frankfurter while dissent-

ing in the *Harney* case: "It cannot be repeated too often that the freedom of the press so indispensable to our democratic society presupposes an independent judiciary which will, when occasion demands, protect that freedom. To help achieve such independent judiciary and to protect its members in their independence, the states of the union from the very beginning and throughout our history have provided for prompt suppression and punishment of interference with the impartial exercise of the judicial process in an active litigation."

The rights of the people in the first and fourteenth amendments are vital and sacred. So are the rights of the people to a court determination uninfluenced by anything but the law and evidence presented in an orderly fashion by competent counsel. We have before us infractions that were repeated, bold and defiant, which had for their purpose an interference with an actually pending judicial determination. We hold therefore that the statements of the plaintiff in error constituted a clear and present danger to the administration of justice.

Of much less importance are the other assignments of error. Plaintiff in error argues that this proceeding is a criminal one and must be prosecuted by the proper constitutional officers. The People are not concerned in contempt actions in the sense that such actions are in violation of the peace and dignity of society. As was said in *People* v. *Jilovsky*, 334 Ill. 536, "Contempts are not crimes within the meaning of the statute defining misdemeanors."

Nor was the court in error in the appointment of an *amicus curiae* to make an investigation and conduct the hearing. This procedure was recognized as a proper one in *Anderson* v. *Macek*, 350 Ill. 135; *People* v. *McDonnell*, 377 Ill. 568; *People* v. *Horwath*, 415 Ill. 499, 502. Also without merit is plaintiff in error's contention that these proceedings did not begin and conclude in a specific form as required by section 33 of article VI of the constitution of the State of Illinois which reads as follows: "All process shall run: *In the name of the People of the State of Illinois*; and all prosecutions shall be carried on: *In*

the name and by the authority of the People of the State of Illinois; and conclude: *Against the peace and dignity of the same,*" In *Anderson* v. *Macek,* 350 Ill. 135, this court held that "Contempts are not crimes" and are not subject to the constitutional provision cited above, stating at page 138: "Furthermore, in *Lester* v. *People,* 150 Ill. 408 we said: 'The holding in respect of whether the contempt proceeding should be entitled and prosecuted as an independent proceeding in the name of the people or carried on as a part of the civil proceeding to which it is incident is not uniform. The question has ordinarily been treated, as it necessarily is, of comparatively little importance.' In *People* v. *Jilovsky,* 334 Ill. 536, we said that contempts are not crimes within the meaning of the statute defining misdemeanors, and that section 33 of article VI of the constitution, which provides that 'all prosecutions shall be carried on: In the name and by the authority of the People of the State of Illinois; and conclude: Against the peace and dignity of the same,' has no application to a proceeding to punish for contempt. There was no warrant for holding the judgment a nullity on the ground suggested." Complaint is also made by the plaintiff in error that his rights were prejudiced in that he was denied a jury trial in these proceedings. It is to be noted that plaintiff in error, in open court, admitted that he had made the statements over television that he is alleged to have made in the order to show cause and consequently there was no factual issue to be tried by a jury. (*People* v. *Burkert,* 7 Ill.2d 506.) In *People ex rel Martin* v. *Panchire,* 311 Ill. 622, we said at 628: "No court has ever held that a party is entitled to a trial by jury in a proceeding for contempt in the absence of a statute so providing."

The last contention is more serious. Plaintiff in error filed a verified petition that recited, among many other things, that the trial judge was prejudiced against him. The petition sought to have the matter transferred to the executive committee of the court for reassignment to another judge, or in the alternative, to obtain a change of venue. This petition was denied by the trial judge, appar-

ently because plaintiff in error had sought to get certain unnamed politicians to prevail upon him to transfer the matter to another judge for hearing, and he did not wish to appear to be yielding to that sort of pressure.

From the record it appears that both the custody proceeding and this proceeding had bizarre aspects that made it unusually difficult for the trial judge to perform his task. But we are of the opinion that the judge's appraisal of the circumstances of this particular case should not have overridden the statutory provisions for a change of venue. The statue (Ill. Rev. Stat. 1955, chap. 146, par. 21,) provides for a change of venue upon the filing of an affidavit of prejudice. The petition filed on behalf of the plaintiff in error, while it contained many extraneous matters, was nevertheless sufficient to bring the statute into play, and the prayer of the petition for reassignment of the case, or for a change of venue, should have been granted. Because it was not, the judgment must be reversed and the cause remanded, with directions for further proceedings consistent herewith.

Reversed and remanded, with directions.

Opinion of the Supreme Court of Illinois in this case, 20 Ill. 2d 224, 170 N.E. 2d 113.

Per Curiam: Plaintiff in error, Thomas D. Goss, a television commentator and performer also known as Thomas Duggan, prosecutes this writ of error to review a judgment of the superior court of Cook County finding him guilty of contempt and sentencing him to ten days in jail and a fine of $100. The present writ comes as a sequel to *People* v. *Goss*, 10 Ill.2d 533, where the pertinent facts may be found and wherein we reversed an identical judgment and remanded the cause for a new hearing. In the prior review, however, all substantive and constitutional issues raised were resolved and decided against plaintiff in error on the ground that his telecasted utterances created a clear and present danger to the administration of justice in a cause then pending in the superior court,

and our reversal and remandment was predicated solely upon the basis of our finding that the trial court had erred in refusing to grant plaintiff in error a change of venue.

After remandment, on March 30, 1959, the cause was eventually set for hearing before Judge William V. Brothers. On July 19, 1959, however, plaintiff in error filed a petition for change of venue in which he listed the names of 49 judges, including Judge Brothers and Judge Ezra Clark, and stated he feared he would not get a fair trial if the hearing on the merits was before any of the judges named. This petition was denied by Judge Brothers, whereupon plaintiff in error immediately filed a second petition, supported by affidavits, charging Judge Brothers with bias and prejudice and praying that the cause be transferred to the executive committee for reassignment to another judge. The latter petition was allowed and the cause was reassigned to and ultimately heard by Judge Clark. At the new hearing it was stipulated that the record in the original proceeding would stand as evidence in the second hearing, and that counsel would be permitted to make such offers of proof as they desired. The People offered no additional evidence. Plaintiff in error, however, again testified, and called several witnesses as well, for a stated purpose of proving the truth of certain utterances he had made. See: 10 Ill.2d 533, at 537.

Although not assigned as a point relied upon for reversal, a statement is made in plaintiff in error's argument that: "The trial court blocked all efforts to introduce such evidence." No specific rulings of the court on particular evidence has been brought to our attention, nor have we been cited authority for the competency of the evidence involved, thus we may consider the point waived even if we assume it was properly presented for review. It is no part of this court's duties or functions to search for errors or, of its own motion, to enter upon an investigation of the record in order to find matter upon which to base a judgment of reversal. (*People* v.

Foster, 288 Ill. 371.) The rules and decisions of this court firmly establish that, upon review, the ruling of the trial court and the error therein must be pointed out specifically, and the claim of error backed up by citation of authority. *People* v. *Kelly,* 404 Ill. 281; *People* v. *Shines,* 394 Ill. 428; 15 I.L.P., Criminal Law, sec. 846.

At the conclusion of all the evidence the court made extensive findings, which plaintiff in error has failed to abstract, and entered a judgment of guilty and imposed sentence as heretofore described. In the brief filed in this court, plaintiff in error, using word for word, point for point and authority for authority, has assigned as grounds for reversal each and every point which, on the basis of substantially the same record, was assigned and decided adversely to him on the previous review. No new argument or authority has been presented in support of such points. Indeed, the present brief does no more than to adopt the argument of the former brief, nor is there any claim that the additional evidence adduced at the second hearing serves in any way to alter the result we reached when the same points were considered on the first review. On the state of the record, it is manifest that our prior opinion is dispositive of the points now reiterated and we agree, as plaintiff in error expressly states at the beginning of this brief, that "the only new issue" presented for decision is whether the court below erred in refusing plaintiff in error's request for a change of venue from Judge Clark.

Our statute relating to change of venue in a criminal case provides, among other things, that only one change of venue shall be allowed (Ill. Rev. Stat., 1957, chap. 146, par. 26,) and that "When the cause for a change of venue is the prejudice of the judge or any two of them against the defendant or his attorney, the petition shall be accompanied by the affidavit of the defendant or his attorney, stating that he believes the judge, or any two of them, as the case may be, are so prejudiced against the applicant or his attorney, that either cannot have a fair and impartial trial, and thereupon the case may be tried

by any other of the circuit judges of the circuit in which the case is pending, * * *." (Par. 21.)

Although it has been frequently and consistently stated that the venue statute should receive a liberal rather than a strict construction, and should be construed to permit rather than to defeat a change of venue, it has been held at the same time that the statute cannot be construed so as to contravene its express provisions and that applicants are held to the statutory requirements. (*People* v. *Chambers*, 9 Ill.2d 83; *People* v. *Dieckman*, 404 Ill. 161; *People* v. *Touhy*, 361 Ill. 332; *People* v. *McWilliams*, 350 Ill. 628.) Applying these principles in the present case, it is manifest that plaintiff in error's petition of June 19, 1959, violated both the letter and the spirit of the Venue Act and was ineffectual to present a prayer for a change of venue from Judge Clark. It is the settled interpretation of section 21 that an allegation of the prejudice of more than two judges in a petition violates the terms of the statute and warrants the denial of the petition. (*People* v. *Chambers*, 9 Ill.2d 83; *People* v. *Dunn*, 226 Ill. App. 437.) Here, the petition on its face asked for a change of venue from 49 judges and was properly denied.

Moreover, it is our opinion that any change of venue from Judge Clark would violate the direction of section 26 that "No more than one change of venue shall be granted to the defendant * * *." (Ill. Rev. Stat., 1957, chap. 146, par. 26; see: *People* v. *Sleezer*, 9 Ill. 2d 57; *People* v. *Touhy*, 361 Ill. 332.) While not labeled as a petition for change of venue, it appears that plaintiff in error was, in effect, granted a change of venue from Judge Brothers on the ground of prejudice, by reason of the allowance of his petition that the cause be retransferred to the executive committee for reassignment to another judge. Since the latter petition was founded upon the judge's prejudice, it is apparent that plaintiff in error received the relief contemplated by the venue statute.

The judgment of the superior court of Cook County is affirmed.

Judgment affirmed.